

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

FEB 28 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Application by Verizon New England  
Inc., Bell Atlantic Communications, Inc.  
(d/b/a Verizon Long Distance), NYNEX  
Long Distance Company  
(d/b/a Verizon Enterprise Solutions),  
and Verizon Global Networks, Inc., for  
Authorization To Provide In-Region,  
InterLATA Services in Massachusetts

CC Docket No. 01-9

**REPLY COMMENTS OF THE**  
**COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

Barbara A. Dooley  
President  
Commercial Internet eXchange Association

Ronald L. Plessner  
Vincent M. Paladini

Piper Marbury Rudnick & Wolfe LLP

1200 Nineteenth Street, N.W.  
Washington, D.C. 20036  
202-861-3900

Its Attorneys

February 28, 2001

No. of Copies rec'd 0+1  
LATA CODE

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by Verizon New England	)	CC Docket No. 01-9
Inc., Bell Atlantic Communications, Inc.	)	
(d/b/a Verizon Long Distance), NYNEX	)	
Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
and Verizon Global Networks, Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in Massachusetts	)	

**REPLY COMMENTS OF THE  
COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

**INTRODUCTION**

The Commercial Internet eXchange Association (“CIX”) is a trade association that represents 125 Internet Service Provider (“ISP”) networks that handle approximately 75 percent of the United States’ Internet traffic, as well as much of the world’s backbone Internet traffic.<sup>1</sup> Established in 1991 to provide the first commercial access point to the Internet backbone, CIX is the world’s oldest trade association of ISPs and Internet-related businesses. CIX, by its

attorneys, files this reply to comments submitted in response to the Commission's Notice, issued on January 16, 2001, requesting comment on the application for authorization to provide in-region interLATA service in Massachusetts filed by Verizon New England, *et al* ("Verizon").<sup>2</sup>

## DISCUSSION

### **I. The Importance of Competitive Broadband Services to ISPs**

---

As CIX noted in its comments filed on February 6, 2001, ISPs have a keen interest in this proceeding. As ISP dial-up subscriber growth turns flat, ISP customers increasingly demand broadband Internet access services, such as Digital Subscriber Line ("DSL").<sup>3</sup> ISPs do not generally provide DSL directly to their customers, but do so through partnerships with facilities-based competitive local exchange carriers ("CLECs") providing DSL services. ISPs are not generally able to utilize DSL supplied by Bell Operating Companies ("BOCs") because the high rates that BOCs charge for such DSL services do not permit the average ISP to profitably compete with the BOC's combined DSL/ISP retail service offering.<sup>4</sup> Moreover, for the vast

---

*(Footnote continued from previous page)*

<sup>1</sup> The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

<sup>2</sup> Public Notice, *Comments Requested on the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, interLATA Service in the State of Massachusetts*, CC Docket No. 01-9, rel. Jan. 16, 2001. *See also* Supplemental Filing of Verizon New England, CC Docket No. 01-9, Jan. 16, 2001 ("*Verizon's Second Massachusetts Application*").

<sup>3</sup> Reshma Kapadia, *EarthLink Warns of Flat Dial-Up Growth*, Reuters, Jan. 30, 2001, <[http://dailynews.yahoo.com/h/nm/20010130/bs/earthlink\\_earns\\_dc\\_2.html](http://dailynews.yahoo.com/h/nm/20010130/bs/earthlink_earns_dc_2.html)>.

<sup>4</sup> *See* CIX Comments at 2, n.4.

majority of ISPs, access to the cable platform is not yet practical. Consequently, it is vital to the continued survival of independent ISPs that they continue to have access to CLEC DSL services.

As CIX stated in its comments in this proceeding, an ISP's ability to provide to its customers quality broadband Internet services at competitive prices is contingent upon its CLEC partner's ability to obtain necessary inputs, such as unbundled network elements ("UNEs"), including line sharing capability, from the BOC. If an ISP's CLEC partner cannot obtain the necessary inputs from the BOC on a nondiscriminatory basis, it will fail to provide DSL to an ISP's customer in a competitively viable manner. That failure tarnishes the reputation of both the ISP and the CLEC in the customer's eyes. That failure also provides an opportunity for Verizon to "save the day" by offering its own broadband and ISP services to the aggrieved customer in place of the competitive services.<sup>5</sup> Consequently, Verizon's lack of compliance with the Commission's market-opening rules in Massachusetts is a critical issue for ISPs and CLECs seeking to compete in that state.

In Massachusetts, as in other states, the strongest incentive currently available to compel Verizon to comply with the Commission's market-opening rules is the Section 271 restriction on its provision of interLATA services. Nevertheless, as described below, Verizon has consistently failed to comply with certain UNE and line sharing rules. In the absence of Verizon's cooperation and compliance with the Commission's market-opening regulations, ISPs, and the CLECs upon which they depend, remain competitively handicapped. Prematurely releasing Verizon from Section 271 restrictions would make that competitive impairment permanent,

undermining the Commission's local market-opening policy and efforts, as well as the pro-competition purposes of the 1996 Act.

## **II. Arthur Anderson Examination of Verizon's Unbundled Network Element and Line Sharing Performance**

---

The Commission has repeatedly stated that although it will consider a state's disposition of applicable fact, it will independently determine whether the record indicates that a BOC's application for in-state interLATA authorization meets the requirements of Section 271.<sup>6</sup> The Commission has also consistently maintained that this determination is ultimately a judgment that the Commission can only make based on its expertise in promoting telecommunications competition in local markets,<sup>7</sup> a case-by-case analysis of the specific facts and circumstances, and in consideration of "the totality of the circumstances."<sup>8</sup>

---

(Footnote continued from previous page)

<sup>5</sup> CIX Comments at 3-4.

<sup>6</sup> *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwest Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for the Provision of In-Region InterLATA Services in Kansas and Oklahoma*, ("SBC Kansas and Oklahoma Order"), at para. 10; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended to Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd at 20560 ("Ameritech Michigan Order"); *SBC Communications v. FCC*, 138 F.3d at 416-17 ("SBC v. FCC").

<sup>7</sup> *SBC Kansas and Oklahoma Order* at para. 29; *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwest Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for the Provision of In-Region InterLATA Services in Texas*, ("SWBT Texas Order"), 15 FCC Rcd 18354, 18374; *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York* ("Bell Atlantic New York Order"), 15 FCC Rcd at 3953, 3972.

<sup>8</sup> *SBC Kansas and Oklahoma Order*, at para. 29.

The evaluation submitted by the Massachusetts Department of Telecommunications and Energy (“DTE”) in this proceeding indicates that the DTE is disposed in favor of the Commission’s grant of Verizon’s application for authority to provide interLATA service in Massachusetts.<sup>9</sup> However, the Massachusetts Attorney General’s comments strongly advises the Commission to deny Verizon’s application because “Verizon has not demonstrated that it has satisfied Checklist Item Number 2.”<sup>10</sup> Clearly, the lack of agreement among these two Massachusetts government entities should give the Commission cause to doubt that granting Verizon’s application would serve that the public interest at this time. Consequently, the Commission should take into full account all of the facts and circumstances that are indicative of Verizon’s past and future compliance with the Commission’s market-opening rules.

In particular, the Commission should carefully examine the audit report produced by Arthur Anderson LLP and submitted into the *Bell Atlantic/GTE Merger* record, CC Docket No. 98-184, ASD File No. 00-30 on January 29, 2001 by Verizon, pursuant to Condition VIII of the *Bell Atlantic/GTE Merger Order*.<sup>11</sup> Condition VIII, *Collocation, Unbundled Network Elements, and Line Sharing Compliance*, of the *Bell Atlantic/GTE Merger Order* requires Verizon to submit to the Commission an independent audit of its compliance with the Commission’s UNE

---

<sup>9</sup> See Massachusetts Department of Telecommunications and Energy, Verizon Massachusetts Supplemental Evaluation, Feb. 6, 2001 (“*DTE Comments*”).

<sup>10</sup> Comments of the Massachusetts Attorney General, Feb. 6, 2001, at 2.

<sup>11</sup> *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, FCC 00-221, at Appendix D (rel. Jun. 16, 2000) (“*Bell Atlantic/GTE Merger Order*”).

and line sharing rules.<sup>12</sup> This condition was meant to facilitate the reduction of the powerful barriers to local competition that would result from the merger of Bell Atlantic and GTE.<sup>13</sup> The audit report clearly states that from July 1, 2000 through October 31, 2000, Verizon failed to comply with certain Commission UNE and line sharing rules. CIX respectfully requests that the Commission incorporate this report into the record for CC Docket 01-9.

The audit report acknowledges that Verizon is required to provide nondiscriminatory access to its “operational support system including access to the same detailed information about the loop available to [Verizon].”<sup>14</sup> The audit report indicates, however, that Verizon is not in compliance with this requirement. In particular, the report states that Verizon “maintains an electronic database that contains detailed line information about a limited number of loops. This information is accessible by both [Verizon] and requesting carriers. [Verizon employees] may access the information in this database electronically. However, this line information is only accessible to requesting carriers through a manual process.”<sup>15</sup>

As discussed in depth in CIX’s comments, the Commission has determined that BOCs must make operations support systems (“OSS”) available on a nondiscriminatory basis pursuant

---

<sup>12</sup> *Id.*

<sup>13</sup> See Letter from Carol E. Matthey, Deputy Chief, Common Carrier Bureau, FCC, to Jeffery Ward, Senior Vice President, Regulatory Compliance, Verizon Communications Inc. (Dec. 21, 2000).

<sup>14</sup> See Attachment, Unbundled Network Element and Line Sharing Examination, at 2.

<sup>15</sup> *Id.*

to section 251(c)(3).<sup>16</sup> The Commission has also stated that competing carriers are “severely disadvantaged, if not precluded altogether, from fairly competing” in the local exchange market in the absence of nondiscriminatory access to the BOC’s OSS.<sup>17</sup> Consequently, for OSS functions of the same type as those that Verizon provides to itself, its customers, or its affiliates, the nondiscrimination standard requires Verizon to offer requesting carriers the opportunity to perform these functions in “substantially the same time and manner.”<sup>18</sup>

Although in its New York Application Verizon was not required to demonstrate that it provides access to loop qualification information as part of the pre-ordering functionality of OSS, in a manner consistent with the requirements of the *UNE Remand Order*, the Commission recently held SBC Communications Inc. (“SBC”) to that standard in Kansas and Oklahoma.<sup>19</sup> The Commission also specified that “[a]t a minimum, [the BOC] must provide carriers with *the same* underlying information that it has in *any of its own databases or internal records*

---

<sup>16</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, 3704, para. 15 (*UNE Remand Order*). “Competing carriers must have access to the functions performed by the incumbent’s OSS in order to formulate and place orders for network elements.” *SBC Kansas and Oklahoma Order* at para. 104. See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83. 47 C.F.R. § 251(c)(3).

<sup>17</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

<sup>18</sup> *Id.*, 15 FCC Rcd at 3991, para. 85.

<sup>19</sup> *SBC Kansas and Oklahoma Order*, at para 121. See also *UNE Remand Order*, 15 FCC Rcd 3696, 3885, paras. 427-431. This aspect of the *UNE Remand Order* had not taken effect at the time SBC filed its second Section 271 application for the State of Texas, and thus was not part of the Commission’s review in that proceeding. See *SWBT Texas Order*, 15 FCC Rcd at 18367-68, para. 28.



(emphasis added).”<sup>20</sup> In addition, the DTE has specifically stated that it “would find it unacceptable and inconsistent with the FCC requirements if Verizon’s employees obtain the relevant [loop qualification information] in a manner of minutes but delay forwarding that information to the requesting CLEC for a day or more.”<sup>21</sup> As the audit report clearly indicates, Verizon grants electronic access to this important loop qualification information to its employees, while requiring that CLECs obtain that information through a protracted manual request process. This persistent discrimination violates the Commission’s rules and the DTE’s policies, as described above, and is a clear and verified example of the persistent anti-competitive disparity that handicaps ISPs seeking to deploy broadband services to their customers in Massachusetts. It would be improper for the Commission to grant interLATA relief to Verizon while such discriminatory practices persist.<sup>22</sup>

The audit report reveals additional instances of Verizon’s systemic failure to comply with the Commission’s market-opening rules. In particular, the audit report states that Verizon has

---

<sup>20</sup>See *id.* For example, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. See *SWBT Texas Order*, 15 FCC Rcd at 18367-68, para. 28.

<sup>21</sup> This statement refers specifically to the ability of Verizon employees to obtain information from Verizon’s Loop Facility Assignment and Control System (“LFACS”) database. See *Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in M.D.T.E. No. 17, Filed with the Department by Verizon New England, Inc. d/b/a/ Verizon Massachusetts on May 5 and June 14, 2000, to Become Effective October 2, 2000, Order on Motions for Reconsideration, Clarification, Extension of Time, and Extension of Judicial Appeal Period, and Request for Reexamination of Compliance Filing, D.T.E. 98-57-Phase III-A (Jan. 8, 2001) at Section III.A.2.*

failed to bill for UNEs in accordance with approved tariffed rates and applicable interconnection agreements.<sup>23</sup> The audit report also states that Verizon continues to reserve dark fiber for its own use, despite the Commission's express prohibition against this practice.<sup>24</sup> Finally, the audit report lists five specific areas of Verizon's persistent failure to comply with the Commission's collocation rules during the audit period of July 1, 2000 through October 31, 2000.

In light of Verizon's clearly documented, corporate-wide failure to comply with Commission market-opening rules, and in light of the coincidence of these systemic failures with specific problems that persist in Massachusetts, grant of Verizon's request for authority to provide interLATA services in Massachusetts is premature. Consequently, CIX respectfully recommends that the Commission deny Verizon's application at this time. CIX also recommends that the Commission indicate that Verizon should first deploy, then document the success of, specific remedies that will bring it into compliance with the Commission's market-opening rules. Compliance with applicable law and regulatory policy should be a threshold prerequisite for any BOC request for additional authority or regulatory relief.

---

*(Footnote continued from previous page)*

<sup>22</sup> CIX Comments at 13-20.

<sup>23</sup> See Attachment, Unbundled Network Element and Line Sharing Examination, at 1- 2.

<sup>24</sup> *Id.* at 2.

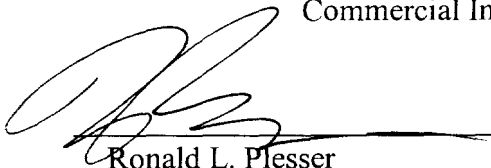
## CONCLUSION

Verizon's Second Application for Authorization to Provide In-Region InterLATA Services in Massachusetts is premature, as Verizon has failed to demonstrate that "the local exchange market in Massachusetts is irreversibly open to competition" and continues to fail to comply with the Commission's market-opening regulations. CIX urges the Commission to maintain its vigilance and support competition in the telecommunications markets by ensuring that Verizon has truly fulfilled the Section 271 checklist before granting approval for Verizon to expand into interLATA service provisioning. By doing so, the Commission will help to ensure that the intent of the 1996 Act is fulfilled and that local facilities are fully opened for competition.

Respectfully submitted,

COMMERCIAL INTERNET EXCHANGE ASSOCIATION

Barbara A. Dooley  
President  
Commercial Internet eXchange Association



Ronald L. Plesser  
Vincent M. Paladini

Piper Marbury Rudnick & Wolfe L.L.P.  
1200 Nineteenth Street, N.W.  
Washington, D.C. 20036  
202-861-3900  
Its Attorneys

February 28, 2001